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MUHAMMAD EZANNIE NOORAZMAN v. MARIA ABDULLAH & ORS

HIGH COURT MALAYA, KUALA LUMPUR
ROZ MAWAR ROZAIN JC
[CIVIL SUIT NO: WA-22NCvC-500-09-2022]
4 JULY 2024

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Abstract – *The person who is appointed and entrusted with the responsibilities to administer an estate, must perform such responsibilities in the best interest of all parties involved, including the beneficiaries of the estate. In a system of justice founded on integrity and fidelity to the law, the act of transferring the property that is calculated to unlawfully divert the assets of the deceased for personal gain through fraudulent means has no place in law and would render the whole transaction void ab initio.*

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BANKRUPTCY: *Dealings in property – Undischarged bankrupt – Execution of memorandum of transfer purporting to transfer property – Whether all properties of bankrupt vest in Director General of Insolvency ('DGI') without any conveyance or transfer – Whether property registered in DGI's name – Whether property vested in DGI – Whether failure to register property into DGI's name rendered transfer void – Insolvency Act 1967, ss. 58 & 349*

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LAND LAW: *Transfer – Validity – Execution of memorandum of transfer ('MOT') by deceased while admitted in hospital and being incapacitated – Whether could have executed MOT – Whether there were witnesses to signature – Whether non-compliance with s. 211 of National Land Code rendered attestation clause false – Whether testimony of witness who was interested party and being contradictory with terms of MOT inadmissible – Whether MOT insufficient instrument – Whether transfer obtained by fraudulent means – Whether transfer void – Whether beneficiary entitled to damages*

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This case concerned serious allegations of fraud, forgery and breach of fiduciary duties in the transfer of a valuable property from the estate of the late Dato' Hj Noorazman ('deceased') to one of his wives, the first defendant. The plaintiff, the son of the deceased borne by the latter's first wife whom he had since divorced, was a co-administrator of his estate. The plaintiff brought this action asserting that the first defendant, the other co-administrator of the deceased's estate, aided by the second defendant, her solicitor, orchestrated an unlawful scheme to transfer the deceased's Changkat Kiara property to the first defendant through forged documents, in violation of the deceased's bankrupt status at the material time. The deceased was adjudicated a bankrupt on 4 January 2011. More than seven years later, he had passed away on 30 July 2019. On 11 July 2019, a memorandum of

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transfer ('MOT') was executed, purportedly transferring the Changkat Kiara property from the deceased to the first defendant. The MOT bore the purported signature of the deceased, attested by the second defendant. Subsequently, on 9 October 2020, the second defendant issued a letter of authorisation bearing the purported signature of the plaintiff and the first defendant that authorised the discharge of the charge on the Changkat Kiara property from RHB Bank Bhd. On 8 January 2021, the second defendant presented the MOT to the third defendant, Pengarah Tanah dan Galian Wilayah Persekutuan, for registration, effecting the transfer of the Changkat Kiara property to the first defendant. The plaintiff alleged that the signatures on the letter of authorisation and the MOT were forged, and the transfer of the Changkat Kiara property was fraudulent. The defendants contended that the transfer was valid, and the deceased had intended to transfer the Changkat Kiara property to the first defendant as a gift. The issues that arose for the court's determination were: (i) whether the MOT was a valid instrument for the transfer of the Changkat Kiara property from the deceased to the first defendant; (ii) whether the transfer of the Changkat Kiara property was void or voidable due to the deceased's bankruptcy at the time of the purported execution of the MOT; (iii) whether the first defendant breached her fiduciary duty as a co-administrator of the deceased's estate by causing the transfer of the Changkat Kiara property to herself; (iv) whether the second defendant breached his fiduciary duty as a solicitor by participating in the allegedly fraudulent transfer of the Changkat Kiara property; and (v) whether the plaintiff was entitled to damages, and if so, the quantum of damages.

Held (finding in favour of plaintiff):

(1) The plaintiff had established that the deceased was admitted to Prince Court Medical Centre on 11 July 2019, the date stated on the MOT. It was highly improbable that the deceased could have executed the MOT on that date, given his incapacitated state. Further, both the first and second defendants had admitted during cross-examination that the second defendant did not witness the deceased's signature on the MOT, despite attesting to the same. This non-compliance with s. 211 of the National Land Code ('NLC') rendered the attestation clause false and the MOT an insufficient instrument for the transfer of the Changkat Kiara property. The first defendant, as an interested party, and her testimony being in contradiction with the terms of the MOT, which stated that the second defendant witnessed the deceased's signature, her testimony was inadmissible under the parole evidence rule. In this light, the MOT was an invalid instrument for the transfer of the Changkat Kiara property from the deceased to the first defendant. This rendered the subsequent registration of the transfer void. (paras 9-12)

(2) The validity of the transfer must be assessed based on the circumstances prevailing at the time of the purported execution of the MOT, which was during the deceased's bankruptcy. The deceased was adjudicated as a bankrupt on 4 January 2011. The MOT was dated 11 July 2019, which was during the subsistence of the deceased's bankruptcy. By virtue of s. 58 of the Insolvency Act 1967 ('IA'), upon being adjudicated a bankrupt, all properties of the bankrupt vest in the DGI without any conveyance or transfer and s. 349 of the NLC reinforces the principle that no land or interest in land vests in the DGI under bankruptcy until it has been registered in the DGI's name. The Changkat Kiara property was never registered in the DGI's name before the purported transfer to the first defendant. The absence of intervention by the official assignee did not confer validity to the transfer. Hence, the transfer of the Changkat Kiara property from the deceased to the first defendant was void due to the deceased's bankruptcy at the time of the purported execution of the MOT. (paras 15-17)

(3) As a co-administrator of the deceased's estate, the first defendant owed a fiduciary duty to act in the best interests of the estate and all its beneficiaries. The omission of the Changkat Kiara property from the list of assets and liabilities of the deceased's estate, without the knowledge or consent of the other beneficiaries, was a clear breach of the first defendant's fiduciary duty. This action deprived the other beneficiaries of their rightful share in the estate's assets, solely for the first defendant's personal benefit. The first defendant's involvement in the allegedly fraudulent transfer further compounded her breach of fiduciary duty. The first defendant breached her fiduciary duty as a co-administrator of the deceased's estate by causing the transfer of the Changkat Kiara property to herself through fraudulent means, in violation of her duty to act in the best interests of the estate and all its beneficiaries. (paras 20, 21 & 23)

(4) The falsely attested signatures on the letter of authorisation and the memorandum of transfer, coupled with the omission of the Changkat Kiara property from the list of assets and liabilities, suggested a concerted effort by the second defendant to facilitate the allegedly fraudulent transfer. The second defendant's actions, in attesting signatures he did not witness and presenting a potentially void instrument (the MOT) for registration, constituted a breach of his fiduciary duty to the deceased's estate and its beneficiaries. By participating in the allegedly fraudulent transfer, the second defendant failed to protect and advance the interests of the estate and its beneficiaries, prioritising instead the interests of his clients, the first defendant and the deceased. Furthermore, as a solicitor attesting signatures, the second defendant owed a duty of care to the plaintiff, whose interests were closely tied to the discharge of the second

defendant's duties in the transfer process. The falsely attested signature of the plaintiff on the letter of authorisation constituted a breach of this duty of care. The second defendant breached his fiduciary duty as a solicitor by participating in the allegedly fraudulent transfer of the Changkat Kiara property, failing to protect the interests of the deceased's estate and its beneficiaries, and breaching the duty of care owed to the plaintiff. (paras 26-29)

(5) The plaintiff, as a co-administrator and beneficiary of the deceased's estate, has suffered personal loss by having to initiate legal proceedings to restore the Changkat Kiara property to the estate. The legal costs and expenses incurred in pursuing this action constituted quantifiable damages suffered by the plaintiff. The loss to the estate was the value of the Changkat Kiara property, which should have been distributed among all beneficiaries. The plaintiff's personal loss constituted the legal costs and expenses incurred in pursuing this action. Therefore, the failure of the plaintiff to particularise the damages in the writ and statement of claim was not fatal. The plaintiff was entitled to damages for the loss suffered by the deceased's estate and himself due to the allegedly fraudulent transfer of the Changkat Kiara property. (paras 36 & 37)

Case(s) referred to:

Danny Tan Yew Chong v. Skyboard Media Sdn Bhd & Ors [2018] CLJU 901; [2018] 1 LNS 901 HC ***(refd)***

George Samuel Koshy v. K Samuel & Satu Lagi lwn. Mohamed Noor Roslan [2015] CLJU 1137; [2015] 1 LNS 1137 HC ***(refd)***

Hari Ram Arokiasamy & Satu Lagi lwn. SK David Raj Sinnappan [2020] CLJU 83; [2020] 1 LNS 83 HC ***(dist)***

He-Con Sdn Bhd v. Bulyah Ishak & Anor And Another Appeal [2020] 7 CLJ 271 FC ***(refd)***

Nasaharudin Mohd Isa v. Mohan Paramasivam & Ors [2023] 7 CLJ 398 CA ***(refd)***

Legislation referred to:

Evidence Act 1950, s. 90A
Insolvency Act 1967, s. 58
National Land Code, ss. 211, 349

For the plaintiff - Rushilan Gunalan; M/s Rushilan & Co
For the 1st & 2nd defendants - DG Roziekah Ussin; M/s Azmi & Assocs
For the 3rd defendant - Darinee Kunasegaran & Norazlin Mohamad Yusoff; SFCs

Reported by S Barathi

JUDGMENT

Roz Mawar Rozain JC:

[1] This case concerns serious allegations of fraud, forgery, and breach of fiduciary duties in the transfer of valuable property from the estate of the late Dato' Hj Noorazman bin Adnan (the deceased) to one of his wives, the first

A defendant. The plaintiff is the son of the deceased, borne by the latter's first wife whom he had since divorced. The plaintiff, a co-administrator of his estate, has brought this action asserting that the first defendant (the other co-administrator of the deceased's estate), aided by the second defendant who is her solicitor, orchestrated an unlawful scheme to transfer the deceased's
B Changkat Kiara property to the first defendant through forged documents in violation of the deceased's bankrupt status at the material time.

[2] After a full trial, with witnesses and documentary evidence tendered by both sides, this court assessed the factual matrix to premise its judgment on the pivotal issues. This case concerned the deceased's Changkat Kiara
C property held under the title Geran 53065 Lot 60460 Mukim Batu, Daerah Kuala Lumpur. The deceased was adjudicated a bankrupt on 4 January 2011. More than seven years later, he had passed away on 30 July 2019. Both the plaintiff and the first defendant are the administrators of the deceased's estate.

[3] On 11 July 2019, a memorandum of transfer was executed,
D purportedly transferring the Changkat Kiara property from the deceased to the first defendant. The memorandum of transfer bore the purported signature of the deceased, attested by the second defendant.

[4] On 9 October 2020, the second defendant issued a letter of
E authorisation bearing the purported signature of the plaintiff and the first defendant that authorised the discharge of the charge on the Changkat Kiara property from RHB Bank Bhd. The second defendant is the solicitor engaged by the first defendant.

[5] On 8 January 2021, the second defendant presented the memorandum
F of transfer to the third defendant for registration, effecting the transfer of the Changkat Kiara property to the first defendant.

[6] The plaintiff alleged that the signatures on the letter of authorisation and the memorandum of transfer were forged, and the transfer of the Changkat Kiara property was fraudulent. The defendants contended that the
G transfer was valid, and the deceased had intended to transfer the Changkat Kiara property to the first defendant as a gift.

Assessment By This Court

Issue 1: Whether The Memorandum Of Transfer Is A Valid Instrument For The
H *Transfer Of The Changkat Kiara Property From The Deceased To The First Defendant*

[7] Through his own testimony and the cross-examination of the first and second defendants, the plaintiff contended that the memorandum of transfer is invalid because the signature of the deceased was forged, and the second
I defendant did not witness the deceased's signature as attested. The plaintiff argued that the deceased could not have signed the memorandum of transfer

on 11 July 2019 as he was admitted to the Prince Court Medical Centre on that date and was incapacitated. The plaintiff asserted the first defendant's testimony that she witnessed the deceased's execution of the memorandum of transfer is inadmissible under the parole evidence rule, as it contradicts the terms of the memorandum of transfer itself. The plaintiff further contended that the non-witnessing of the deceased's signature by the second defendant violated s. 211 of the National Land Code (NLC), rendering the registration of the memorandum of transfer invalid.

[8] The first and second defendants argued that the memorandum of transfer is valid, and the deceased intended to transfer the Changkat Kiara property to the first defendant as a gift. The first and second defendants asserted that the deceased signed the memorandum of transfer on a different date, which is a common conveyancing practice, and the non-contemporaneous dating does not affect the validity of the instrument. The first and second defendants contended that the inaccurate attestation by the second defendant does not invalidate the memorandum of transfer, relying on the case of *Hari Ram Arokiasamy & Satu Lagi lwn. SK David Raj Sinnappan* [2020] CLJU 83; [2020] 1 LNS 83; [2020] MLJU 60; [2020] MLRHU 70. It was the position of the first and second defendants that the testimony of the first defendant that she had witnessed the deceased's execution of the memorandum of transfer is admissible as direct evidence of the deceased's intention to transfer the Changkat Kiara property to her.

[9] Upon assessment of the evidence, this court finds that the plaintiff has established through documentary evidence and testimonies of witnesses, that the deceased was admitted to Prince Court Medical Centre on 11 July 2019, the date stated on the memorandum of transfer. This fact remains unchallenged by the defendants. It is highly improbable that the deceased could have executed the memorandum of transfer on that date, given his incapacitated state.

[10] Furthermore, both the first and second defendants have admitted during cross-examination that the second defendant did not witness the deceased's signature on the memorandum of transfer, despite attesting to the same. This non-compliance with s. 211 of the NLC renders the attestation clause false and the memorandum of transfer an insufficient instrument for the transfer of the Changkat Kiara property. The first and second defendants' argument that the inaccurate attestation does not invalidate the memorandum of transfer, relied on the case of *Hari Ram* (*supra*). However, that case is distinguishable. In *Hari Ram* (*supra*), the person whose signature was alleged to have been improperly attested was a party to the suit and could corroborate his signature. In the present case, the deceased is deceased, and there is no direct evidence from him to corroborate the execution of the memorandum of transfer.

[11] The first and second defendants' contention that the first defendant's testimony regarding witnessing the deceased's execution of the memorandum of transfer is admissible as direct evidence is misplaced. The first defendant is an interested party in this suit, and her testimony contradicted the terms of the memorandum of transfer itself, which stated that the second defendant witnessed the deceased's signature. As such, the first defendant's testimony is inadmissible under the parole evidence rule, as it seeks to vary the terms of the written instrument. (See *He-Con Sdn Bhd v. Bulyah Ishak & Anor And Another Appeal* [2020] 7 CLJ 271; [2020] 5 MLRA 98; [2020] 4 MLJ 662; [2020] 5 AMR 645.)

[12] In light of the above, this court finds on a balance of probabilities that the memorandum of transfer is an invalid instrument for the transfer of the Changkat Kiara property from the deceased to the first defendant. Thus, this renders the subsequent registration of the transfer void.

Issue 2: Whether The Transfer Of The Chanqkat Kiara Property From The Deceased To The First Defendant Is Void Or Voidable Due To The Deceased's Bankruptcy At The Time Of The Purported Execution Of The Memorandum Of Transfer

[13] It was the plaintiff's submissions that the transfer of the Changkat Kiara property from the deceased to the first defendant is void because the deceased was a bankrupt at the time of the purported execution of the memorandum of transfer on 11 July 2019. The plaintiff contended that s. 58 of the Insolvency Act 1967 (IA) divests a bankrupt of all property, which vests in the Director General of Insolvency (DGI) without any conveyance or transfer. The plaintiff asserted that s. 349 of the NLC requires the DGI to register any land or interest in land claimed under bankruptcy laws in the DGI's name before it can vest in the DGI. The plaintiff implored this court that since the Changkat Kiara property was not registered in the DGI's name before the deceased's discharge from bankruptcy, the transfer to the first defendant is void.

[14] The first and second defendants argued that the issue of the deceased's bankruptcy is academic because the deceased was subsequently discharged from bankruptcy, and the transfer was registered after his discharge. It was their argument that the purpose of bankruptcy law is to protect creditors' interests, and since the deceased's debts were settled at the time of his death, the transfer should be upheld. The first and second defendants pointed out that the official assignee (OA) did not intervene or challenge the transfer, indicating the transfer's validity. The defendants argued that even if there were issues with the transfer due to the deceased's bankruptcy, the OA is the authority empowered to challenge the registration, not the plaintiff.

[15] It is clear by virtue of s. 58 of the IA – upon being adjudicated a bankrupt, all properties of the bankrupt vest in the DGI without any conveyance or transfer. The deceased was adjudicated a bankrupt on 4 January 2011. The memorandum of transfer is dated 11 July 2019 which was during the subsistence of the deceased's bankruptcy. While the first and second defendants argued that the deceased's subsequent discharge from bankruptcy renders the issue academic, this argument is flawed. The validity of the transfer must be assessed based on the circumstances prevailing at the time of the purported execution of the memorandum of transfer, which was during the deceased's bankruptcy.

[16] Furthermore, s. 349 of the NLC reinforces the principle that no land or interest in land vests in the DGI under bankruptcy until it has been registered in the DGI's name. In this case, the Changkat Kiara property was never registered in the DGI's name before the purported transfer to the first defendant. The absence of intervention by the OA does not confer validity to the transfer. The OA's role is to protect creditors' interests, and the OA's non-intervention does not preclude the invalidity of the transfer due to the deceased's lack of capacity as a bankrupt to affect such a transfer. This court considered the arguments by the first and second defendants that the OA is the authority empowered to challenge the registration. In this court's considered view, this does not negate the plaintiff's standing as a co-administrator of the deceased's estate to challenge the validity of the transfer.

[17] On this issue, this court holds that the transfer of the Changkat Kiara property from the deceased to the first defendant is void due to the deceased's bankruptcy at the time of the purported execution of the memorandum of transfer. (See *George Samuel Koshy v. K Samuel & Satu Lagi lwn. Mohamed Noor Roslan* [2015] CLJU 1137; [2015] 1 LNS 1137; [2015] MLRHU 758; *Danny Tan Yew Chong v. Skyboard Media Sdn Bhd & Ors* [2018] CLJU 901; [2018] MLRHU 734.)

Issue 3: Whether The First Defendant Breached Her Fiduciary Duty As A Co-Administrator Of The Deceased's Estate By Causing The Transfer Of The Changkat Kiara Property To Herself

[18] The plaintiff claimed that the first defendant breached her fiduciary duty as a co-administrator of the deceased's estate by causing the Changkat Kiara property to be transferred to herself through fraudulent means. It was contended that the first defendant acted in her personal interests by omitting the Changkat Kiara property from the list of assets and liabilities of the deceased's estate, without the knowledge or consent of the other beneficiaries. The plaintiff asserted that the first defendant's actions in orchestrating the allegedly fraudulent transfer demonstrated a breach of her duty to act in the best interests of the deceased's estate and all its beneficiaries.

[19] The first and second defendants countered that the first defendant did not breach her fiduciary duty as the transfer was in accordance with the deceased's purported wishes to gift the Changkat Kiara property to the first defendant. Thus, they contended that the first defendant's actions were in furtherance of the purported deceased's intentions, and not for her personal interests. It was asserted that the appointment of the first defendant as an administrator of the deceased's estate should have been challenged in the probate court, if at all, and not in the present proceedings.

[20] As a co-administrator of the deceased's estate, the first defendant owed a fiduciary duty to act in the best interests of the estate and all its beneficiaries. However, the evidence showed that the first defendant acted in her personal interests by orchestrating the allegedly fraudulent transfer of the Changkat Kiara property to herself. The omission of the Changkat Kiara property from the list of assets and liabilities of the deceased's estate, without the knowledge or consent of the other beneficiaries, is a clear breach of the first defendant's fiduciary duty. This action deprived the other beneficiaries of their rightful share in the estate's assets, solely for the first defendant's personal benefit.

[21] Furthermore, the evidence presented by the plaintiff, including the expert testimony on the forgery of signatures and the falsity of the attestation clause, raises serious doubts about the legality of the transfer process. The first defendant's involvement in the allegedly fraudulent transfer further compounds her breach of fiduciary duty. The argument that the first defendant was acting in furtherance of the purported deceased's intentions is unsubstantiated and contradicted by the evidence. The deceased's intentions, even if proven, did not absolve the first defendant of her fiduciary obligations as a co-administrator of the estate.

[22] The first and second defendants' contention that the appointment of the first defendant as an administrator should have been challenged in the probate court is misplaced. The present proceedings concern the first defendant's actions as an appointed co-administrator, not the validity of her appointment itself.

[23] In light of the above, this court finds that the first defendant breached her fiduciary duty as a co-administrator of the deceased's estate by causing the transfer of the Changkat Kiara property to herself through fraudulent means, in violation of her duty to act in the best interests of the estate and all its beneficiaries.

Issue 4: Whether The Second Defendant Breached His Fiduciary Duty As A Solicitor By Participating In The Allegedly Fraudulent Transfer Of The Changkat Kiara Property

[24] For this, the plaintiff submitted that the facts showed the second defendant had falsely attested the signatures on the letter of authorisation and the memorandum of transfer, despite not witnessing the execution of those

documents. This also questioned the accuracy of the date said to have been executed by the deceased. The plaintiff asserted that the second defendant omitted the Changkat Kiara property from the list of assets and liabilities of the deceased's estate, despite being aware of the property's existence. The plaintiff argued that the second defendant's actions in facilitating the allegedly fraudulent transfer constituted a breach of his fiduciary duty to protect the interests of the deceased's estate and its beneficiaries.

[25] It was argued for the second defendant that his fiduciary duty was owed solely to the deceased and the first defendant, as his clients in the transfer of the Changkat Kiara property. It was further submitted that the second defendant acted in accordance with the instructions of his clients and did not breach any fiduciary duty owed to the plaintiff or the other beneficiaries of the deceased's estate. The first and second defendants maintained the position that the second defendant's actions were within the scope of his professional duties as a solicitor, and any alleged irregularities do not amount to a breach of fiduciary duty.

[26] It is this court's considered view that as a solicitor, the second defendant owed a fiduciary duty not only to his clients but also to the deceased's estate and its beneficiaries, whose interests were closely tied to the discharge of his duties in the transfer process. The evidence presented by the plaintiff raises serious doubts about the propriety of the second defendant's actions in the transfer process. The falsely attested signatures on the letter of authorisation and the memorandum of transfer, coupled with the omission of the Changkat Kiara property from the list of assets and liabilities, suggested a concerted effort by the second defendant to facilitate the allegedly fraudulent transfer.

[27] While the second defendant may have been acting on the instructions of his clients, the first defendant and the deceased (if proven), this does not absolve him of his fiduciary duty to the deceased's estate and its beneficiaries. As a solicitor, the second defendant was obligated to ensure that the transfer process was conducted in accordance with the law and in the best interests of all parties involved, including the beneficiaries of the estate. The second defendant's actions in attesting signatures he did not witness and presenting a potentially void instrument (the memorandum of transfer) for registration constituted a breach of his fiduciary duty to the deceased's estate and its beneficiaries. By participating in the allegedly fraudulent transfer, the second defendant failed to protect and advance the interests of the estate and its beneficiaries, prioritising instead the interests of his clients, the first defendant and the deceased (if proven). On a balance of probabilities, this court is not satisfied that the first and second defendants had proven the deceased was the client of the second defendant and the latter was under his instructions.

[28] Furthermore, as a solicitor attesting signatures, the second defendant owed a duty of care to the plaintiff, whose interests were closely tied to the discharge of the second defendant's duties in the transfer process. The falsely attested signature of the plaintiff on the letter of authorisation constituted a breach of this duty of care. The first and second defendants' argument that the second defendant's actions were within the scope of his professional duties is unpersuasive. A solicitor's professional duties are circumscribed by ethical and legal boundaries, which the second defendant appeared to have breached through his alleged participation in the fraudulent transfer.

[29] Based on the evidence, this court finds that the second defendant breached his fiduciary duty as a solicitor by participating in the allegedly fraudulent transfer of the Changkat Kiara property, failing to protect the interests of the deceased's estate and its beneficiaries, and breaching the duty of care owed to the plaintiff. (See *Nasaharudin Mohd Isa v. Mohan Paramasivam & Ors* [2023] 7 CLJ 398; [2023] 5 MLRA 440).

Letter Of Authorisation

[30] Before this court deals with the final issue as to damages, this court had also considered the first and second defendants' assertion that the plaintiff had duly executed the letter of authorisation as arranged by one Dato' Alexander Chacko. The first defendant claimed in her witness statement (answer to question 12) that a person named Alexander Chako witnessed the plaintiff's signature on the letter of authorisation for the discharge of charge (pp. 41 to 42). However, when asked during cross-examination, the plaintiff testified that he does not know of such an individual and that individual Dato' Alexander Chako did not come to him with any authorisation letter for his signature (p. 19).

[31] The plaintiff was also shown a photograph of Dato' Alexander Chako (p. 197 of bundle B1) and confirmed that he does not know the person in the picture (p. 19). The first defendant tried to produce the photograph allegedly received from Dato' Alexander Chako's personal assistant as evidence but faced objections due to improper certification under s. 90A of the Evidence Act 1950. Ultimately, while the first defendant claimed to have received the photograph from Dato' Alexander Chako's personal assistant *via* WhatsApp on her phone, she could not produce the actual WhatsApp conversation as evidence (pp. 20 to 21).

[32] Based on the evidence presented, particularly the plaintiff's clear denial of knowing Dato' Alexander Chako or being approached by him for signing any documents, this court is not satisfied on a balance of probabilities with the story put forth by the first and second defendants regarding Dato' Alexander Chako's involvement in witnessing the plaintiff's signature. The first defendant's claim appears unsupported by credible evidence, as she herself could not produce the alleged WhatsApp conversation or any other

concrete proof to corroborate her version of events. The lack of substantive evidence, coupled with the plaintiff's direct contradiction, casts significant doubt on the veracity of the first and second defendants' stories concerning Dato' Alexander Chako's role in the matter. In the absence of convincing evidence to support their claims, this court decides to reject the narrative presented by the first and second defendants regarding Dato' Alexander Chako's purported involvement in witnessing the plaintiff's signature on the letter of authorisation.

Issue 5: Whether The Plaintiff Is Entitled To Damages, And If So, The Quantum Of Damages

[33] In the event that this court finds that the transfer of the Changkat Kiara property was indeed fraudulent, the plaintiff implored this court that he is entitled to damages for the loss suffered by the deceased's estate. The loss suffered by the estate according to the plaintiff, is by being deprived of an asset that should have been distributed among all beneficiaries according to inheritance laws. The plaintiff also asserted that he has personally suffered loss by having to initiate legal proceedings to restore the Changkat Kiara property to the estate, incurring legal costs and expenses. The plaintiff seeks an assessment of damages against the first and second defendants for their alleged fraudulent actions.

[34] The first and second defendants argued that the plaintiff has failed to prove or particularise the damages claimed throughout the trial. It was submitted that the plaintiff cannot seek an assessment of damages at this stage, as the reliefs prayed for in the writ and statement of claim did not specify separate proceedings for assessment of damages. They submitted that the trial court is meant to fully hear and decide on both liability and quantum of damages, and the plaintiff's failure to prove damages throughout the trial proceedings precluded him from seeking an assessment of damages at this juncture.

[35] The deceased's estate has undoubtedly suffered loss by being deprived of an asset that should have been distributed among all beneficiaries according to inheritance laws. The evidence suggests that the first and second defendants orchestrated the allegedly fraudulent transfer of the Changkat Kiara property to the first defendant, depriving the other beneficiaries of their rightful share in the estate's assets.

[36] Additionally, the plaintiff, as a co-administrator and beneficiary of the deceased's estate, has suffered personal loss by having to initiate legal proceedings to restore the Changkat Kiara property to the estate. The legal costs and expenses incurred in pursuing this action constitute quantifiable damages suffered by the plaintiff. The nature of the damages is evident from the circumstances of the case. The loss to the estate is the value of the

Changkat Kiara property, which should have been distributed among all beneficiaries. The plaintiff's personal loss constitutes the legal costs and expenses incurred in pursuing this action. Therefore, the failure of the plaintiff to particularise the damages in the writ and statement of claim is not fatal in this instance.

[37] The first and second defendants' contention that the plaintiff cannot seek an assessment of damages at this stage is unconvincing. While the reliefs prayed for in the writ and statement of claim did not explicitly specify separate proceedings for assessment of damages, this does not preclude the court from awarding damages where appropriate. This court rules that the plaintiff is entitled to damages for the loss suffered by the deceased's estate and himself due to the allegedly fraudulent transfer of the Changkat Kiara property. The quantum of damages shall be assessed based on the value of the Changkat Kiara property, which rightfully belongs to the deceased's estate. The consequential order of this court is to include the Changkat Kiara property in the deceased's estate. The plaintiff will also be awarded general damages. His hardship, pain and suffering will be taken into account and the amount of the legal expenses incurred by the plaintiff in pursuing this action can be reflective of the sum awarded which is also to be assessed.

Conclusion

[38] In closing, this court re-affirms the inviolable principles that govern the administration of estates and the duties owed by those entrusted with such responsibilities. The evidence has clearly established a deplorable scheme to unlawfully divert the deceased's assets for personal gain through fraudulent means. Such conduct by the first and second defendants has no place in a system of justice founded on integrity and fidelity to the law.

[39] The transfer of the Changkat Kiara property from the deceased's estate to the first defendant was tainted by forgery, false attestations, and disregard for the deceased's bankrupt status which rendered the entire transaction void *ab initio*. The first defendant's breach of her fiduciary duties as a co-administrator, and the second defendant's calculated participation in the fraudulent scheme while clothed in the duties of a legal professional, constitute egregious violations that cannot be countenanced.

[40] Upon evaluating the evidence as iterated above, this court renders the following judgment in favour of the plaintiff:

(i) the memorandum of transfer is an invalid instrument for the transfer of the Changkat Kiara property from the deceased to the first defendant;

(ii) the transfer of the Changkat Kiara property from the deceased to the first defendant is void due to the deceased's bankruptcy at the time of the purported execution of the memorandum of transfer;

(iii) the first defendant breached her fiduciary duty as a co-administrator of the deceased's estate by causing the transfer of the Changkat Kiara property to herself through fraudulent means;

(iv) the second defendant breached his fiduciary duty as a solicitor by participating in the allegedly fraudulent transfer of the Changkat Kiara property; and

(v) the plaintiff is entitled to damages for the loss suffered by the deceased's estate and himself due to the allegedly fraudulent transfer of the Changkat Kiara property. The quantum of damages shall be assessed based on the value of the Changkat Kiara property and reflective of the legal expenses incurred by the plaintiff in pursuing this action.

[41] Thus, the following are this court's orders:

(i) the transfer of the Changkat Kiara property from the deceased to the first defendant be set aside and declared void;

(ii) the Changkat Kiara property be restored to the deceased's estate for distribution among all beneficiaries according to inheritance laws;

(iii) the first and second defendants jointly and severally pay damages to the plaintiff, with the quantum to be assessed based on the value of the Changkat Kiara property and reflective of the legal expenses incurred by the plaintiff in pursuing this action;

(iv) the first and second defendants jointly and severally pay the costs of this action to the plaintiff; and

(v) the third defendant to execute the necessary to affect this order. The third defendant's costs is also to be borne by the first and second defendants jointly.

[42] For this case, the plaintiff sought costs of RM100,000 considering that the trial was before the High Court and the plaintiff had to put in a lot of hard work singlehandedly to present the evidence in court. The plaintiff claimed he did it without the assistance of the first and second defendants, although he had repeatedly requested their aid. The plainitiff claimed that the second defendant's position must also be taken into account as a solicitor and member of the Malaysian Bar as to the complaints put forth by the plaintiff he had only responded with 'noted'. The answer to the quantum of costs prayed for, the first and second defendants had only sought for a minimal amount of RM30,000.

[43] This court finds it reasonable to award costs of RM100,000 to the plaintiff which is to be borne by the first and second defendants. They are also to pay the third defendant costs of RM4,000.